

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 ANDRE COMBS,)	No. C 09-2643 LHK (PR)
13 Petitioner,)	ORDER GRANTING
14 vs.)	PETITIONER'S MOTION TO
15))	DISMISS UNEXHAUSTED
16 RON BARNES, Warden,)	CLAIM; ORDER TO SHOW
17 Respondent.)	CAUSE

18 Petitioner, a state prisoner proceeding *pro se*, filed a petition for writ of habeas
19 corpus pursuant to 28 U.S.C. § 2254. Respondent filed a motion to dismiss the petition for
20 failure to exhaust state remedies. Although given an opportunity to do so, Petitioner did not file
21 an opposition. On September 20, 2010, the Court granted Respondent's motion to dismiss and
22 required Petitioner to elect how he wanted to resolve the issue of his unexhausted claim in this
23 Court by: (1) dismissing the unexhausted claim (claim three) and going forward with only the
24 remaining exhausted claim (claim two); (2) terminating this habeas action and then completing
25 the exhaustion of his unexhausted claim before filing a new federal petition presenting all of his
26 claims; or (3) requesting a stay of the instant habeas proceedings while he exhausted claim three
27 in the California Supreme Court, and then filing a response with this Court within thirty days.

28 On December 7, 2010, Petitioner filed a notice, electing to continue to proceed with the

1 sole exhausted claim, and dismissing claim three of the instant petition.

2 Accordingly, Petitioner's request to continue with only the exhausted claim and dismiss
3 claim three is GRANTED. The Court will renew its order to show cause to Respondent as to
4 why the petition should not be granted as to the remaining claim: whether Petitioner was
5 deprived of his right to present a defense by the exclusion of evidence regarding the victim's
6 mental illness.

7 **CONCLUSION**

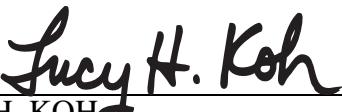
8 1. Petitioner's request to continue to proceed with only the exhausted claim and
9 dismiss claim three is GRANTED.

10 2. Respondent shall file with the court and serve on Petitioner, within **sixty**
11 **days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules
12 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be
13 granted. Respondent shall file with the answer and serve on Petitioner a copy of all portions of
14 the state trial record that have been transcribed previously and that are relevant to a
15 determination of the issues presented by the petition.

16 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
17 court and serving it on Respondent within **thirty days** of his receipt of the answer.

18 3. It is Petitioner's responsibility to prosecute this case. Petitioner is reminded that
19 all communications with the Court must be served on Respondent by mailing a true copy of the
20 document to Respondent's counsel. Petitioner must keep the Court and all parties informed of
21 any change of address by filing a separate paper captioned "Notice of Change of Address." He
22 must comply with the Court's orders in a timely fashion. Failure to do so may result in the
23 dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure
24 41(b). IT IS SO ORDERED.

25 Dated: 12/17/2010


26 LUCY H. KOH
United States District Judge